

245A.03 WHO MUST BE LICENSED.

Subdivision 1. **License required.** Unless licensed by the commissioner under this chapter, an individual, organization, or government entity must not:

- (1) operate a residential or a nonresidential program;
- (2) receive a child or adult for care, supervision, or placement in foster care or adoption;
- (3) help plan the placement of a child or adult in foster care or adoption or engage in placement activities as defined in section 259.21, subdivision 9, in this state, whether or not the adoption occurs in this state; or
- (4) advertise a residential or nonresidential program.

Subd. 2. **Exclusion from licensure.** (a) This chapter does not apply to:

- (1) residential or nonresidential programs that are provided to a person by an individual who is related unless the residential program is a child foster care placement made by a local social services agency or a licensed child-placing agency, except as provided in subdivision 2a;
- (2) nonresidential programs that are provided by an unrelated individual to persons from a single related family;
- (3) residential or nonresidential programs that are provided to adults who do not misuse substances or have a substance use disorder, a mental illness, a developmental disability, a functional impairment, or a physical disability;
- (4) sheltered workshops or work activity programs that are certified by the commissioner of employment and economic development;
- (5) programs operated by a public school for children 33 months or older;
- (6) nonresidential programs primarily for children that provide care or supervision for periods of less than three hours a day while the child's parent or legal guardian is in the same building as the nonresidential program or present within another building that is directly contiguous to the building in which the nonresidential program is located;
- (7) nursing homes or hospitals licensed by the commissioner of health except as specified under section 245A.02;
- (8) board and lodge facilities licensed by the commissioner of health that do not provide children's residential services under Minnesota Rules, chapter 2960, mental health or chemical dependency treatment;
- (9) homes providing programs for persons placed by a county or a licensed agency for legal adoption, unless the adoption is not completed within two years;
- (10) programs licensed by the commissioner of corrections;
- (11) recreation programs for children or adults that are operated or approved by a park and recreation board whose primary purpose is to provide social and recreational activities;
- (12) programs operated by a school as defined in section 120A.22, subdivision 4; YMCA as defined in section 315.44; YWCA as defined in section 315.44; or JCC as defined in section 315.51, whose primary purpose is to provide child care or services to school-age children;

- (13) Head Start nonresidential programs which operate for less than 45 days in each calendar year;
- (14) noncertified boarding care homes unless they provide services for five or more persons whose primary diagnosis is mental illness or a developmental disability;
- (15) programs for children such as scouting, boys clubs, girls clubs, and sports and art programs, and nonresidential programs for children provided for a cumulative total of less than 30 days in any 12-month period;
- (16) residential programs for persons with mental illness, that are located in hospitals;
- (17) the religious instruction of school-age children; Sabbath or Sunday schools; or the congregate care of children by a church, congregation, or religious society during the period used by the church, congregation, or religious society for its regular worship;
- (18) camps licensed by the commissioner of health under Minnesota Rules, chapter 4630;
- (19) mental health outpatient services for adults with mental illness or children with emotional disturbance;
- (20) residential programs serving school-age children whose sole purpose is cultural or educational exchange, until the commissioner adopts appropriate rules;
- (21) community support services programs as defined in section 245.462, subdivision 6, and family community support services as defined in section 245.4871, subdivision 17;
- (22) the placement of a child by a birth parent or legal guardian in a preadoptive home for purposes of adoption as authorized by section 259.47;
- (23) settings registered under chapter 144D which provide home care services licensed by the commissioner of health to fewer than seven adults;
- (24) substance use disorder treatment activities of licensed professionals in private practice as defined in section 245G.01, subdivision 17;
- (25) consumer-directed community support service funded under the Medicaid waiver for persons with developmental disabilities when the individual who provided the service is:
- (i) the same individual who is the direct payee of these specific waiver funds or paid by a fiscal agent, fiscal intermediary, or employer of record; and
 - (ii) not otherwise under the control of a residential or nonresidential program that is required to be licensed under this chapter when providing the service;
- (26) a program serving only children who are age 33 months or older, that is operated by a nonpublic school, for no more than four hours per day per child, with no more than 20 children at any one time, and that is accredited by:
- (i) an accrediting agency that is formally recognized by the commissioner of education as a nonpublic school accrediting organization; or
 - (ii) an accrediting agency that requires background studies and that receives and investigates complaints about the services provided.

A program that asserts its exemption from licensure under item (ii) shall, upon request from the commissioner, provide the commissioner with documentation from the accrediting agency that verifies: that

the accreditation is current; that the accrediting agency investigates complaints about services; and that the accrediting agency's standards require background studies on all people providing direct contact services;

(27) a program operated by a nonprofit organization incorporated in Minnesota or another state that serves youth in kindergarten through grade 12; provides structured, supervised youth development activities; and has learning opportunities take place before or after school, on weekends, or during the summer or other seasonal breaks in the school calendar. A program exempt under this clause is not eligible for child care assistance under chapter 119B. A program exempt under this clause must:

(i) have a director or supervisor on site who is responsible for overseeing written policies relating to the management and control of the daily activities of the program, ensuring the health and safety of program participants, and supervising staff and volunteers;

(ii) have obtained written consent from a parent or legal guardian for each youth participating in activities at the site; and

(iii) have provided written notice to a parent or legal guardian for each youth at the site that the program is not licensed or supervised by the state of Minnesota and is not eligible to receive child care assistance payments;

(28) a county that is an eligible vendor under section 254B.05 to provide care coordination and comprehensive assessment services; or

(29) a recovery community organization that is an eligible vendor under section 254B.05 to provide peer recovery support services.

(b) For purposes of paragraph (a), clause (6), a building is directly contiguous to a building in which a nonresidential program is located if it shares a common wall with the building in which the nonresidential program is located or is attached to that building by skyway, tunnel, atrium, or common roof.

(c) Except for the home and community-based services identified in section 245D.03, subdivision 1, nothing in this chapter shall be construed to require licensure for any services provided and funded according to an approved federal waiver plan where licensure is specifically identified as not being a condition for the services and funding.

Subd. 2a. **Foster care by an individual who is related to a child; license required.** Notwithstanding subdivision 2, paragraph (a), clause (1), in order to provide foster care for a child, an individual who is related to the child, other than a parent, or legal guardian, must be licensed by the commissioner except as provided by section 245A.035.

Subd. 2b. **Exception.** The provision in subdivision 2, paragraph (a), clause (2), does not apply to:

(1) a child care provider who as an applicant for licensure or as a license holder has received a license denial under section 245A.05, a conditional license under section 245A.06, or a sanction under section 245A.07 from the commissioner that has not been reversed on appeal; or

(2) a child care provider, or a child care provider who has a household member who, as a result of a licensing process, has a disqualification under this chapter that has not been set aside by the commissioner.

Subd. 2c. [Repealed, 2015 c 37 s 3]

Subd. 3. Unlicensed programs. (a) It is a misdemeanor for an individual, organization, or government entity to provide a residential or nonresidential program without a license issued under this chapter and in willful disregard of this chapter unless the program is excluded from licensure under subdivision 2.

(b) The commissioner may ask the appropriate county attorney or the attorney general to begin proceedings to secure a court order against the continued operation of the program, if an individual, organization, or government entity has:

(1) failed to apply for a license under this chapter after receiving notice that a license is required or continues to operate without a license after receiving notice that a license is required;

(2) continued to operate without a license after a license issued under this chapter has been revoked or suspended under this chapter, and the commissioner has issued a final order affirming the revocation or suspension, or the license holder did not timely appeal the sanction; or

(3) continued to operate without a license after a temporary immediate suspension of a license has been issued under this chapter.

(c) The county attorney and the attorney general have a duty to cooperate with the commissioner.

Subd. 4. Excluded child care programs; right to seek licensure. Nothing in this section shall prohibit a child care program that is excluded from licensure under subdivision 2, paragraph (a), clause (2), or under Laws 1997, chapter 248, section 46, as amended by Laws 1997, First Special Session chapter 5, section 10, from seeking a license under this chapter. The commissioner shall ensure that any application received from such an excluded provider is processed in the same manner as all other applications for licensed family day care.

Subd. 4a. Excluded school-age programs; right to seek or continue licensure. Nothing in this section shall prohibit a school-age program that is excluded from licensure under subdivision 2, paragraph (a), clause (27), from seeking a license or continuing to be licensed under this chapter.

Subd. 5. Excluded housing with services programs; right to seek licensure. Nothing in this section shall prohibit a housing with services program that is excluded from licensure under subdivision 2, paragraph (a), clause (25), from seeking a license under this chapter. The commissioner shall ensure that any application received from such an excluded provider is processed in the same manner as all other applications for licensed adult foster care.

Subd. 6. Right to seek certification. Nothing in this section shall prohibit a residential program licensed by the commissioner of corrections to serve children, that is excluded from licensure under subdivision 2, paragraph (a), clause (10), from seeking certification from the commissioner of human services under this chapter for program services for which certification standards have been adopted.

Subd. 6a. Adult foster care homes or community residential settings serving people with mental illness; certification. (a) The commissioner of human services shall issue a mental health certification for adult foster care homes licensed under this chapter and Minnesota Rules, parts 9555.5105 to 9555.6265, or community residential settings licensed under chapter 245D, that serve people with a primary diagnosis of mental illness where the home is not the primary residence of the license holder when a provider is determined to have met the requirements under paragraph (b). This certification is voluntary for license holders. The certification shall be printed on the license, and identified on the commissioner's public website.

(b) The requirements for certification are:

(1) all staff working in the adult foster care home or community residential setting have received at least seven hours of annual training under paragraph (c) covering all of the following topics:

- (i) mental health diagnoses;
- (ii) mental health crisis response and de-escalation techniques;
- (iii) recovery from mental illness;
- (iv) treatment options including evidence-based practices;
- (v) medications and their side effects;
- (vi) suicide intervention, identifying suicide warning signs, and appropriate responses;
- (vii) co-occurring substance abuse and health conditions; and
- (viii) community resources;

(2) a mental health professional, as defined in section 245.462, subdivision 18, or a mental health practitioner as defined in section 245.462, subdivision 17, are available for consultation and assistance;

(3) there is a protocol in place to address a mental health crisis; and

(4) there is a crisis plan for each individual that identifies who is providing clinical services and their contact information, and includes an individual crisis prevention and management plan developed with the individual.

(c) The training curriculum must be approved by the commissioner of human services and must include a testing component after training is completed. Training must be provided by a mental health professional or a mental health practitioner. Training may also be provided by an individual living with a mental illness or a family member of such an individual, who is from a nonprofit organization with a history of providing educational classes on mental illnesses approved by the Department of Human Services to deliver mental health training. Staff must receive three hours of training in the areas specified in paragraph (b), clause (1), items (i) and (ii), prior to working alone with residents. The remaining hours of mandatory training, including a review of the information in paragraph (b), clause (1), item (ii), must be completed within six months of the hire date. For programs licensed under chapter 245D, training under this section may be incorporated into the 30 hours of staff orientation required under section 245D.09, subdivision 4.

(d) License holders seeking certification under this subdivision must request this certification on forms provided by the commissioner and must submit the request to the county licensing agency in which the home or community residential setting is located. The county licensing agency must forward the request to the commissioner with a county recommendation regarding whether the commissioner should issue the certification.

(e) Ongoing compliance with the certification requirements under paragraph (b) shall be reviewed by the county licensing agency at each licensing review. When a county licensing agency determines that the requirements of paragraph (b) are not met, the county shall inform the commissioner, and the commissioner will remove the certification.

(f) A denial of the certification or the removal of the certification based on a determination that the requirements under paragraph (b) have not been met by the adult foster care or community residential setting license holder are not subject to appeal. A license holder that has been denied a certification or that has had

a certification removed may again request certification when the license holder is in compliance with the requirements of paragraph (b).

Subd. 7. Licensing moratorium. (a) The commissioner shall not issue an initial license for child foster care licensed under Minnesota Rules, parts 2960.3000 to 2960.3340, or adult foster care licensed under Minnesota Rules, parts 9555.5105 to 9555.6265, under this chapter for a physical location that will not be the primary residence of the license holder for the entire period of licensure. If a license is issued during this moratorium, and the license holder changes the license holder's primary residence away from the physical location of the foster care license, the commissioner shall revoke the license according to section 245A.07. The commissioner shall not issue an initial license for a community residential setting licensed under chapter 245D. When approving an exception under this paragraph, the commissioner shall consider the resource need determination process in paragraph (h), the availability of foster care licensed beds in the geographic area in which the licensee seeks to operate, the results of a person's choices during their annual assessment and service plan review, and the recommendation of the local county board. The determination by the commissioner is final and not subject to appeal. Exceptions to the moratorium include:

- (1) foster care settings that are required to be registered under chapter 144D;
- (2) foster care licenses replacing foster care licenses in existence on May 15, 2009, or community residential setting licenses replacing adult foster care licenses in existence on December 31, 2013, and determined to be needed by the commissioner under paragraph (b);
- (3) new foster care licenses or community residential setting licenses determined to be needed by the commissioner under paragraph (b) for the closure of a nursing facility, ICF/DD, or regional treatment center; restructuring of state-operated services that limits the capacity of state-operated facilities; or allowing movement to the community for people who no longer require the level of care provided in state-operated facilities as provided under section 256B.092, subdivision 13, or 256B.49, subdivision 24;
- (4) new foster care licenses or community residential setting licenses determined to be needed by the commissioner under paragraph (b) for persons requiring hospital level care;
- (5) new foster care licenses or community residential setting licenses determined to be needed by the commissioner for the transition of people from personal care assistance to the home and community-based services;
- (6) new foster care licenses or community residential setting licenses determined to be needed by the commissioner for the transition of people from the residential care waiver services to foster care services. This exception applies only when:
 - (i) the person's case manager provided the person with information about the choice of service, service provider, and location of service to help the person make an informed choice; and
 - (ii) the person's foster care services are less than or equal to the cost of the person's services delivered in the residential care waiver service setting as determined by the lead agency; or
- (7) new foster care licenses or community residential setting licenses for people receiving services under chapter 245D and residing in an unlicensed setting before May 1, 2017, and for which a license is required. This exception does not apply to people living in their own home. For purposes of this clause, there is a presumption that a foster care or community residential setting license is required for services provided to three or more people in a dwelling unit when the setting is controlled by the provider. A license holder subject to this exception may rebut the presumption that a license is required by seeking a reconsideration of the commissioner's determination. The commissioner's disposition of a request for reconsideration is final

and not subject to appeal under chapter 14. The exception is available until June 30, 2018. This exception is available when:

(i) the person's case manager provided the person with information about the choice of service, service provider, and location of service, including in the person's home, to help the person make an informed choice; and

(ii) the person's services provided in the licensed foster care or community residential setting are less than or equal to the cost of the person's services delivered in the unlicensed setting as determined by the lead agency.

(b) The commissioner shall determine the need for newly licensed foster care homes or community residential settings as defined under this subdivision. As part of the determination, the commissioner shall consider the availability of foster care capacity in the area in which the licensee seeks to operate, and the recommendation of the local county board. The determination by the commissioner must be final. A determination of need is not required for a change in ownership at the same address.

(c) When an adult resident served by the program moves out of a foster home that is not the primary residence of the license holder according to section 256B.49, subdivision 15, paragraph (f), or the adult community residential setting, the county shall immediately inform the Department of Human Services Licensing Division. The department may decrease the statewide licensed capacity for adult foster care settings.

(d) Residential settings that would otherwise be subject to the decreased license capacity established in paragraph (c) shall be exempt if the license holder's beds are occupied by residents whose primary diagnosis is mental illness and the license holder is certified under the requirements in subdivision 6a or section 245D.33.

(e) A resource need determination process, managed at the state level, using the available reports required by section 144A.351, and other data and information shall be used to determine where the reduced capacity determined under section 256B.493 will be implemented. The commissioner shall consult with the stakeholders described in section 144A.351, and employ a variety of methods to improve the state's capacity to meet the informed decisions of those people who want to move out of corporate foster care or community residential settings, long-term service needs within budgetary limits, including seeking proposals from service providers or lead agencies to change service type, capacity, or location to improve services, increase the independence of residents, and better meet needs identified by the long-term services and supports reports and statewide data and information.

(f) At the time of application and reapplication for licensure, the applicant and the license holder that are subject to the moratorium or an exclusion established in paragraph (a) are required to inform the commissioner whether the physical location where the foster care will be provided is or will be the primary residence of the license holder for the entire period of licensure. If the primary residence of the applicant or license holder changes, the applicant or license holder must notify the commissioner immediately. The commissioner shall print on the foster care license certificate whether or not the physical location is the primary residence of the license holder.

(g) License holders of foster care homes identified under paragraph (f) that are not the primary residence of the license holder and that also provide services in the foster care home that are covered by a federally approved home and community-based services waiver, as authorized under chapter 256S or section 256B.092 or 256B.49, must inform the human services licensing division that the license holder provides or intends to provide these waiver-funded services.

(h) The commissioner may adjust capacity to address needs identified in section 144A.351. Under this authority, the commissioner may approve new licensed settings or delicense existing settings. Delicensing of settings will be accomplished through a process identified in section 256B.493. Annually, by August 1, the commissioner shall provide information and data on capacity of licensed long-term services and supports, actions taken under the subdivision to manage statewide long-term services and supports resources, and any recommendations for change to the legislative committees with jurisdiction over the health and human services budget.

(i) The commissioner must notify a license holder when its corporate foster care or community residential setting licensed beds are reduced under this section. The notice of reduction of licensed beds must be in writing and delivered to the license holder by certified mail or personal service. The notice must state why the licensed beds are reduced and must inform the license holder of its right to request reconsideration by the commissioner. The license holder's request for reconsideration must be in writing. If mailed, the request for reconsideration must be postmarked and sent to the commissioner within 20 calendar days after the license holder's receipt of the notice of reduction of licensed beds. If a request for reconsideration is made by personal service, it must be received by the commissioner within 20 calendar days after the license holder's receipt of the notice of reduction of licensed beds.

(j) The commissioner shall not issue an initial license for children's residential treatment services licensed under Minnesota Rules, parts 2960.0580 to 2960.0700, under this chapter for a program that Centers for Medicare and Medicaid Services would consider an institution for mental diseases. Facilities that serve only private pay clients are exempt from the moratorium described in this paragraph. The commissioner has the authority to manage existing statewide capacity for children's residential treatment services subject to the moratorium under this paragraph and may issue an initial license for such facilities if the initial license would not increase the statewide capacity for children's residential treatment services subject to the moratorium under this paragraph.

Subd. 8. Excluded providers seeking licensure. Nothing in this section shall prohibit a program that is excluded from licensure under subdivision 2, paragraph (a), clause (26), from seeking licensure. The commissioner shall ensure that any application received from such an excluded provider is processed in the same manner as all other applications for child care center licensure.

Subd. 9. Permitted services by an individual who is related. Notwithstanding subdivision 2, paragraph (a), clause (1), and subdivision 7, an individual who is related to a person receiving supported living services may provide licensed services to that person if:

(1) the person who receives supported living services received these services in a residential site on July 1, 2005;

(2) the services under clause (1) were provided in a corporate foster care setting for adults and were funded by the developmental disabilities home and community-based services waiver defined in section 256B.092;

(3) the individual who is related obtains and maintains both a license under chapter 245D or successor licensing requirements for the provision of supported living services and an adult foster care license under Minnesota Rules, parts 9555.5105 to 9555.6265; and

(4) the individual who is related is not the guardian of the person receiving supported living services.

History: 1987 c 333 s 3; 1988 c 411 s 2; 1989 c 282 art 2 s 66-68; 1990 c 568 art 2 s 41; 1991 c 265 art 9 s 63; 1992 c 499 art 3 s 12; 1992 c 513 art 9 s 9; 1993 c 338 s 3,4; 1993 c 339 s 5; 1994 c 483 s 1;

1994 c 598 s 1,2; 1994 c 631 s 3,4,31; 1995 c 158 s 3; 1995 c 207 art 2 s 5; 1Sp1995 c 3 art 16 s 13; 1997 c 113 s 16; 1997 c 248 s 9; 1998 c 397 art 11 s 3; 1998 c 406 art 1 s 4,37; 1998 c 407 art 6 s 3,4; art 9 s 4; 2000 c 327 s 1,2,6; 1Sp2001 c 9 art 14 s 7-9; 2002 c 375 art 1 s 7; 2002 c 379 art 1 s 113; 2003 c 130 s 12; 2004 c 288 art 1 s 8,9; 2005 c 56 s 1; 1Sp2005 c 4 art 1 s 5,6; 2007 c 112 s 3; 2009 c 79 art 8 s 8; 2009 c 86 art 1 s 89; 2009 c 142 art 2 s 12,13; 2009 c 173 art 1 s 43; 2010 c 329 art 1 s 2,3; 2010 c 352 art 1 s 4,5; 2011 c 86 s 4; 1Sp2011 c 9 art 7 s 1; 2012 c 216 art 9 s 3; art 16 s 1; art 18 s 1; 2012 c 247 art 4 s 5,6; 2013 c 108 art 7 s 3; art 8 s 10-12; art 9 s 7; 2013 c 125 a 1 s 107; 2014 c 262 art 5 s 2; 2014 c 291 art 3 s 1; 2014 c 312 art 25 s 2; art 27 s 6; 2015 c 37 s 1,2; 2016 c 158 art 1 s 89-93; 1Sp2017 c 6 art 2 s 3; art 8 s 12; 2019 c 54 art 2 s 5; 1Sp2019 c 9 art 2 s 22,23